IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

CRP.No. 1882 of 2003(G)

AGAINST THE ORDER DATED 13/08/2003 IN IA 854/2003 IN OS.176/2000 of M.C.,PARAPPANANGADI

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PETITIONERS IN CRP:RESPONDENTS IN I.A/PLAINTIFF IN O.S:

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1. **ALAVI, S/O. THALAPPIL KUTTY HASSAN, VELIMUKK AMSOM, DESOM, TIRURANGADI TALUK.**

2. **SAINABA, W/O. THALAPPIL KUTTY HASSAN, VELIMUKK AMSOM, DESOM, TIRURANGADI TALUK.**

BY ADV. SRI.S.V.BALAKRISHNA IYER
SRI.HARISH R. MENON

RESPONDENTS IN CRP/PETITIONERS IN IA/DEFENDANTS IN O.S.:

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1. **CHANATH VEETIL ABDURAHIMAN, S/O. BEERANKUTTY MUSALIYAR, VELIMUKK AMSOM, DESOM, TIRURANGADI TALUK.**

2. **EDAYADI KUMMAM THODIYIL JAFER SADIK, S/O. HYDER HAJI, VELIMUKK AMSOM, DESOM, TIRURANGADI TALUK.**

BY ADV. SRI.K.M.SATHYANATHA MENON for R1 & R2

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 18/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

C.R.P. No.1882 of 2003 G

Dated this the 18th day of July, 2007.

O R D E R

What is impugned in this Civil Revision Petition is the order passed by the learned Munsiff, Parappanangadi, allowing an application filed by the respondents herein to set aside the ex parte decree in a suit for money filed by the petitioners.

2. Heard both sides.

3. As rightly submitted by Sri.Harish R.Menon, the learned Munsiff has observed in the impugned order that the explanation offered by the respondents for their absence did not amount to sufficient cause for the purpose of Order IX Rule 13 of the Code of Civil Procedure. Nevertheless, the learned Munsiff allowed the application on the reason that the application was filed within the period of limitation. It is not the law that all applications filed under Order IX Rule 13 within the period prescribed in the Limitation Act should be mechanically allowed. It is for the applicants to urge that there were sufficient cause for their absence on the particular day, when they were absent. But, it is also to be

kept in mind that the policy of law is to facilitate adjudication of all causes on merits as far as possible.

4. Considering the circumstances that the 1st petitioner had come down on more than one occasion from abroad to give evidence in the case, the amount of Rs.1,500/- presently determined by the learned Munsiff as costs will not be adequate. Accordingly, the impugned order will stand modified to the following extent:

5. The total amount payable by the respondents as condition for allowing the application filed by them shall be Rs.3,500/-, inclusive of the sum of Rs.1,500/- presently fixed by the learned Munsiff. Out of the above amount, Rs.3,000/-, will be paid to the 1st petitioner and Rs.500/- to the Thirurangadi Taluk Legal Services Committee. The payment, as directed above, shall be made by the respondents within one month from today, failing which I.A.No.854/2003 filed by the respondents will stand dismissed.

Civil Revision Petition is disposed of as above.

Sd/-

(PIUS C. KURIAKOSE)
JUDGE

sk/

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